

Notice of Allowability	Application No.	Applicant(s)	
	09/557,376	BORMANN ET AL.	
	Examiner	Art Unit	
	Lauren Q Wells	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Amendment filed 11/28/03.
2. ☒ The allowed claim(s) is/are 30-61 (renumbered as 1-32).
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. <input type="checkbox"/> Notice of References Cited (PTO-892) 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date <u>9/22/03</u> 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | <ol style="list-style-type: none"> 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance 9. <input type="checkbox"/> Other _____ |
|---|---|

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DETAILED ACTION

Claims 30-61 are pending. The Amendment filed 11/28/03, cancelled claims 1-29 and added claims 30-61.

The Election of Species Requirement of 1/2/01 is hereby withdrawn, as a full search of all the species has been completed.

It is additionally noted that Applicant's request to Correct Inventorship filed 3/25/03, was received and entered.

Document AK on the IDS filed 4/25/00 did not recite a date. The Examiner has written in the date, re-initialed and resigned this document. A copy of the re-initialed and resigned IDS is enclosed.

Examiner's Amendment

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Kurt Briscoe on 5/3/04.

The application has been amended as follows:

- 1) In claim 30, delete the phrase "and optionally further comprising:".
- 2) In claim 46, delete the phrase "and optionally further comprising:".

Reasons for Allowance

The following is an examiner's statement of reasons for allowance:

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Claims 30-61 are allowable over the prior art, as the prior art neither teaches nor suggests a method of treating acne comprising applying to acned skin a cosmetic and/or dermatological preparation in the form of an emulsion comprising an effective amount of malic acid, lactic acid, citric acid, tartaric acid, salicylic acid, or glycolic acid, and an interface active substance A of the formula recited in the instant claims, and an interface substance B of the formula recited in the instant claims.

The closest prior art is US 5,759,584, which teaches a method of treating acne comprising applying compositions to the skin comprising wool wax acids and at least one monoglycerol monocarboxyl acid monoester of substance B, wherein wool wax acids are taught as comprising alpha-hydroxy acids. However, '584 does not teach interface-active substance A or the alpha-hydroxy acids recited in the instant claims, nor is there motivation to add the instant alpha-hydroxy acids and the interface-active substance A to the compositions of '584. The alpha-hydroxy acids of '584 are of formula $\text{CH}_3-(\text{CH}_2)_n-\text{CH}(\text{OH})(\text{COOH})$, wherein n is 7-31, which does not read or come close to reading on the hydroxycarboxylic acids recited in the instant claims. Furthermore, '584 does not teach the hydroxycarboxylic acids in "an amount effective to treat said skin" as defined by the instant invention.

The Amendment filed 11/28/03, wherein the claims were amended to recite a method of applying the composition to acned skin or skin blemished due to a bacterial secondary infection, is sufficient to overcome the 35 USC 102 rejection over US 5,961,999 in the previous Office Action.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

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fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

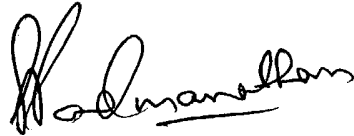
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is 571-272-0634. The examiner can normally be reached on M&R (5:30-4).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lqw


SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER